

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Petitions to Postpone Initial Filing)
Window for Two-Way Multipoint) File No. DA 00-1256
Distribution Service and Instructional)
Television Fixed Service Applications)

To: Chief, Mass Media Bureau

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COMMENTS

On behalf of Baypoint TV, Inc.,^{1/} submitted herewith is a Declaration, of its engineering consultant supporting a nine month postponement of the two-way filing window in the above captioned matter.

Respectfully submitted,

Baypoint TV, Inc.

By: William M. Barnard
William M. Barnard JKE
Its Counsel
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June 15, 2000

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^{1/} Baypoint is the licensee or principal in the licensee of multiple MMDS stations.

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Lawrence Behr Associates, Inc.

Declaration of Kathryn G. Tesh, N.C.E.

I, Kathryn G. Tesh, hereby declare as follows:

1. I am over 18 years of age and competent to make this declaration.
2. I am a Technical Consultant with the firm of Lawrence Behr Associates, Inc. ("LBA") in Greenville, North Carolina. Among other services, LBA conducts engineering analyses and technical studies for FCC filings by licensees in broadcast and other radio services, including Instructional Television Fixed Service (ITFS) and Multipoint Distribution Service (MDS). My education and experience are a matter of record with the Federal Communications Commission. I am a NARTE certified engineer.
3. LBA has been retained by Baypoint TV, Inc. to assist in the preparation of applications for two way MDS service. Other entities also have sought our services concerning the preparation of two-way applications for the ITFS and MDS services.
4. Although LBA has extended a great deal of effort to prepare two-way applications for the July 3 – July 10th filing window properly, several difficulties have been encountered. These include last-minute modifications of the technical rules, the unavailability of commercially available software to perform these very complex analyses, the lack of an electronic database from the Federal Communications Commission, missing and incomplete files when reference room research was attempted to compensate for the lack of electronic database.
 - (a) The final version of Appendix D was not released until mid-April. This means that the commercially available software being developed specifically for two-way interference studies had to be modified at this late date.
 - (b) The software is still not performing as consultants would like. Although the developers have worked valiantly, the complexity of the issue and the short time frame are working against them. Critical interference issues are still being interpreted, and when the interpretation changes so must the software. New modifications are being released regularly. I have attended multi-day training seminars to learn about the CelPlan software as well as the EDX Engineering software. It appears that both programs will perform as needed, *when they are finalized.*

Telecommunications Consultants

Unfortunately, the timing is such that the initial filing window is also the actual beta testing period. Since the interference study rules changed some two and one-half months before the initial filing window, there is insufficient time to test the changes and users are having unforeseen problems.

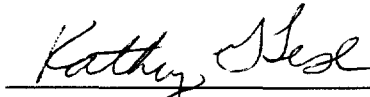
- (c) The electronic database is not available. Some of the license information was recently put on the FCC's web page, approximately one month before the filing window, but it still contains no technical information.
- (d) In theory, the paper copies and other license information can be obtained from the FCC reference room and then used for interference studies. However, these files are often incomplete or missing. As more and more licensees try to prepare applications, more and more research is done using these files, and their availability will be reduced simply because they will be constantly checked out. In addition, the Commission staff limits the number of files any one person can receive to three per day, although dozens must be reviewed for each application prepared.
- (e) Hundreds of unresolved petitions for reconsideration are pending. It is not possible at present to consider these in the application design and preparation process, yet if any such petition is granted it can have a destructive impact on the new two-way system.
- (f) If an initial application is filed in the two-way window and it is determined that it is incorrect due to errors in the database or the software, it cannot be easily amended. Any amendment requires that it lose its place in the processing line and protect all other applications filed in the window.
- (g) Site acquisition, if a real assurance of availability is to be obtained, is a time-consuming process. Once a site area (search ring) is selected as suitable from an engineering standpoint, it is our experience that it takes 45 to 60 days to identify a suitable site that may be available. If a new tower requiring notification to the FAA is desired, there is a minimum of 45 days required for study of a tower, followed by antenna registration and assignment of an antenna registration number, before an application can be submitted to the FCC. If the tower proposal must be circulated by the FAA, the delay is even longer. Whether a new structure to support the antenna is needed or not, zoning delays can keep an applicant from knowing whether he has reasonable assurance of a site. It is our experience that zoning will take from 60 days to 120 days.
- (h) The Commission still has not released instructions on electronic filing.
- (i) Clearly, there is not time before the July 3rd to July 10th filing window for small entities to do the engineering work required for designing and filing a two-way application. The process is specialized and the software is expensive. ITFS and MDS licensees who are small businesses will not have the resources to prepare the engineering

design and interference studies for their applications, and will have to out-source it. The consultants who have the software do not have time to train and equip large numbers of additional staff, and estimates within the industry range up to several hundred man-hours time to prepare the engineering portion of an application. There are not enough trained people in the country to serve the small business segments of the market adequately. Therefore, they will be left out of the process unless there is a postponement.

- (j) A nine months delay is requested. Thirty days may be adequate for the Commission to put the engineering data on their web site, and the software designers to finalize it. Training and equipping staff can easily take two months. System design, site acquisition and application preparation will realistically take several months as well, if entities are to ensure that their applications will not have to be amended before implementation due to unavailability of the proposed transmitter sites.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 9, 2000

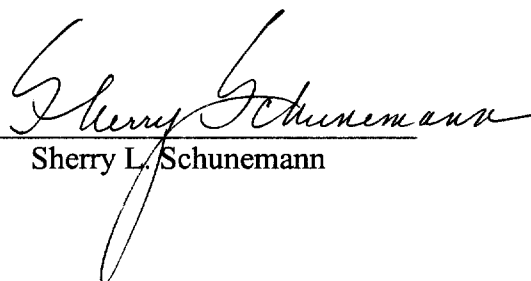

Kathryn G. Pesh, N.C.E

Certificate of Serviced

I, Sherry L. Schunemann, a secretary in the law office of Smithwick & Belendiuk, P.C., do hereby certify that a copy of the foregoing "Comments" was, this 15th day of June, 2000, hand served on the following:

Mr. David Roberts
Federal Communications Commission
Video Services Division
Mass Media Bureau
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Chuck Dziedzic, Esquire
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Sherry L. Schunemann